Committee on Human Services	Proposed S.B. No. 636	Opposed
	Proposed H.B. No. 5425	Opposed
PUBLIC HEARING	Proposed H.B. No. 5232	Opposed
	Proposed H.B. No. 5980	Opposed
	Proposed H.B. No. 5982	Opposed
Tuesday, February 10, 2009	Proposed H.B. No. 6145	Opposed as drafted

Testimony of Carolyn Signorelli
Chief Child Protection Attorney

Good Morning Senator Doyle and Representative Walker and distinguished Committee Members. Thank you for the opportunity to be heard regarding some of the proposals that are before you today.

S.B. 636 and H.B. 5425

I am addressing Senate Bill 636 and House Bill 5425 together as my concerns are essentially the same for both. Requiring proof beyond a reasonable doubt before a court can act to protect children from abuse or neglect or immediate physical danger, would render it virtually impossible in many cases to protect children who have unexplained serious physical injuries or who are at imminent risk of physical danger. Beyond a reasonable doubt is an extremely high burden of proof, reserved for criminal cases where it is usually known that some crime occurred in the past with a known victim and known consequences and the issue before the court is deciphering whether or not the alleged perpetrator is guilty and should be deprived of his liberty.

Proving abuse or neglect so that the court can assist DCF in protecting children can be challenging because neglect and abuse occurs within the privacy of a family's home and because children often are not good reporters or witnesses against their parents. In removal cases due to "imminent physical danger" predicting future harm is speculative and creating reasonable doubt would be relatively easy to accomplish. While this would be beneficial for the parents to whom my office provides representation, this advantage must be weighed against the interest of our child clients who are often in need of protection.

The Supreme Court of Connecticut explored the various burdens of proof and their applicability to the different types of proceedings in Juvenile Court. The court explained, citing *Santosky* v. *Kramer,* 455 U.S. 745, 755 (1982), in which the United States Supreme Court ruled that the "clear and convincing" standard was sufficient to meet due process requirements when permanently depriving a parent of his rights: "[T]he minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed . . . ." *In re Juvenile Appeal (83-CD),* 189 Conn. 276, 297 (1983). The court went on to hold that the fair preponderance of the evidence standard of proof was the most appropriate when addressing the temporary deprivation of a parent's right to custody:

> [T]he child's safety pending further proceedings is the primary concern of a temporary custody hearing...The state, as parens patriae, represents the safety interest of the child in custody proceedings. This interest must be balanced against the combined family integrity interests of parent and child, which are represented by the parent. An elevated standard of proof cannot protect the child's interests, because some interest of the child is adversely affected whether the state or the parent prevails. The child's interests are best protected not by an elevated standard of proof, but by the "risk of harm" standards enunciated today.

Id. 298.

In other words, the risk of either an erroneous deprivation of the parents' rights or a fatal failure to protect an at risk child, should not be distributed to children at the expense of their physical well-being and lives.

The reference by the Connecticut Supreme Court to the "risk of harm" standard as the most appropriate way to balance a parent's interest in family integrity and a child's interest in safety is consistent with the policy clearly set forth by the Connecticut General Assembly in § 17a-101(a):

> The public policy of this state is: To protect children whose health and welfare *may* be adversely affected through injury and neglect; to strengthen the family and to make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the reporting of suspected child abuse, investigation of such reports by a social agency, and provision of services, where needed, to such child and family.

The use of the term "may" in the above statute necessarily means that a child does not have to suffer actual injury or discernible consequences of neglect in

order for the state to act to protect the child from harm. The language of the Order of Temporary Custody statute also allows for the state to prevent harm to a child before a child actually suffers an injury or death by authorizing removal if the child "is in immediate physical danger from the child's or youth's surroundings, and (2) as a result of said conditions, the child's or youth's safety is endangered and immediate removal from such surroundings is necessary to ensure the child's or youth's safety. C.G.S. § 46b-129(b). Our courts have interpreted this edict by the legislature and held: "Our statutes clearly and explicitly recognize the state's authority to act before harm occurs to protect children whose health and welfare may be adversely affected and not just children whose welfare has been affected. ." *In re Francisco R.,* 111 Conn. App. 529, 537 (2008).

The measure contained in Bill No. 5425 to prohibit the use of the theory of predictive neglect or abuse is unnecessary. Predictive neglect or abuse is simply a descriptive term for the above statutory scheme designed to prevent harm to children based upon the existence of risks to a child's safety and well-being. This proposed statute to eliminate the theory of predictive neglect or abuse as a basis for removal would essentially overturn the current policy of the state to protect children and prevent actual harm when the state can prove by a fair preponderance of the evidence that the conditions under which the child is currently living result in neglect or expose a child to immediate danger which could result in physical harm.

Bill 636 also seeks to treat child protection cases as if they were criminal cases by invoking the principle of the presumption of innocence, applying beyond a reasonable doubt burden to prove guilt and equating parents with criminal defendants. Currently parents are not found guilty of neglect or abuse, rather the child is found to be neglected or abused and the state is obligated to make efforts to help rectify the circumstances that lead to the abuse or neglect. The child welfare system is intended to be ameliorative, not punitive. The purpose of this distinction is so the system focuses on the needs of the child, the rehabilitation of the parent and the maintenance of the family, as opposed to guilt or innocence, punishment or acquittal.

I recognize that there are cases where it appears that DCF and the court have unnecessarily removed children, adjudicated them neglected or terminated their parents' rights. However, poor or unwelcome decisions on individual cases should not serve as the basis to eradicate sound policy necessary to protect those who cannot protect or speak up for themselves. This would amount to a reversal of decades of advocacy on behalf of abused and neglected children who were once seen as their parents' property and whose suffering was considered a family matter. Solutions to poor decision making lie in better training and increased accountability for Judges, attorneys, and social workers; consistent application of Structured Decision Making risk assessment procedures by DCF and zealous and skilled legal representation for children and parents to ensure

their rights are protected, the services to which they are entitled are provided and to skillfully contest the case when the facts do not support a finding of neglect, imminent physical danger or grounds for termination.

I respectfully request that the committee vote to oppose bills 636 and 5425.

H.B. 5232

I oppose this bill on the grounds that it would appear to eliminate the ability of a child through his or her legal representative or guardian ad litem to participate in treatment plan decisions or to object to the administration of medication. To the extent that a child is able to express a preference regarding such matters, he or she should have the opportunity to be heard and should be afforded due process in the event a parent or guardian seeks to have medication administered involuntarily.

H.B. No. 5980

For many of the same reasons I cited in my opposition to Bills 636 and 5425, I cannot support the enactment of Bill No. 5980, which requires that DCF "obtain documentation to verify the truth of allegations ... prior to initiating an investigation." DCF investigations are essentially the first step taken to begin the process of obtaining documentation of neglect or abuse after the facts alleged in a report if proven are deemed sufficient to constitute neglect. The actual act of seeking documentation would currently be considered part of an investigation. If there was no pre-existing documentation of the alleged neglect or abuse available at the time of the referral, according to this proposed bill, DCF would be unable to fulfill its statutory duty to protect children because it could not commence an investigation. Anything that prevents the commencement of an investigation that is not based upon insufficient allegations of abuse or neglect, goes too far to protect a parent's right to custody of his or her children at the expense of children who may be abused and neglected and in need of protection by the state.

H.B. No. 5982

In general, I am opposed to disclosing to the public what are currently considered confidential and extremely sensitive records maintained by DCF, in many cases regarding the clients for whom my office provides representation. However, without knowing which "certain records" will be made available to the public without consent and under what circumstances, it is difficult to address the intent and consequences of this bill.

If the intent is to provide greater accountability through transparency about DCF actions, then I would consider consent of the subjects of the record to be absolutely necessary or that the disclosed records are de-identified. If the intent

is to shed light on the nature of these cases and the plight of neglected and abused children and to hold neglectful and abusive parents more accountable to their communities, I would oppose a move in this punitive direction. Intentionally abusive parents typically experience this public derision due to press coverage of criminal proceedings. In the majority of neglect cases there is a lack of intent on the part of the parents to neglect or harm their children – they simply need help with a myriad of issues that prevent them from appropriately parenting. Moreover, disclosure of these records to the public can be extremely harmful to the emotional well-being of the children who are the subject of the records.

I am in agreement with the second provision regarding the confidentiality of the names of individuals who cooperate with an investigation, with the caveat that such confidentiality can be overcome by court order in the event a case is filed in juvenile court and it is contested. The parents and children have a right to their DCF record and need that information in order to prepare a defense against DCF's petition. To the extent that DCF's case relies upon information obtained from a particular individual named in the record, the children and parents should have access to the identity of that individual for purposes of preparing their case and confronting or producing witnesses with information regarding the allegations of the petition.

H.B. No. 6145

I am opposed to this bill as written. I agree with the prohibition against providing hearsay evidence to the court. However, this should be more explicit and state "inadmissible hearsay." There are extensive rules of evidence regulating categories, purpose and admissibility of hearsay. The offer and use of hearsay is subject to control in the court setting.

The remainder of the provision concerning psychological, psychiatric, medical or other evaluators would need to be more specific regarding the purpose for which DCF was communicating with these evaluators. It would be extremely difficult to expect DCF social workers to edit their communications by identifying and eliminating hearsay when they initiate psychiatric, psychological or medical treatment for a foster child and attempt to share background and current behaviors or symptoms to a provider who will be evaluating the child for purposes of treatment. In relation to evaluations for the purpose of litigation, the ability of parties to communicate with court ordered evaluators is already regulated by case law and the Rules of Court.

In relation to Section (2) of this proposed bill, I am in support of its concept but would recommend that the word "exculpatory" not be used in the context of child protection cases as it suggest that the proceedings are criminal in nature and that the allegations pertain to a parent's guilt or innocence, as opposed to the condition of the child. The phrase "evidence favorable to the respondent" would be more appropriate in my view.

Therefore, I respectfully request that the Committee not act favorably on this bill as currently written.